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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,473	01/23/2002	Jude S. Sauer	INE-0002C	5120
23413	7590	10/14/2005	EXAMINER	
CANTOR COLBURN, LLP			JACKSON, GARY	
55 GRIFFIN ROAD SOUTH			ART UNIT	
BLOOMFIELD, CT 06002			PAPER NUMBER	

3731

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,473

Applicant(s)

SAUER, JUDE S.

Examiner

Gary Jackson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-13, 20, 21, 23-45, 51-58, 63-73 and 80-88 is/are pending in the application.
- 4a) Of the above claim(s) 65-73 and 80-88 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-13, 20, 21, 23-30, 39-45, 51-58 and 63 is/are rejected.
- 7) ☒ Claim(s) 31-38 and 64 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This action is responsive to applicant's amendment filed March 21, 2005. The amendment has been considered, however, it does not place the claims in condition for allowance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-8 and 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5, line the phrases "said first lever" and "said second lever" lack antecedent basis in the penultimate and last lines respectively.

Claim 12, the phrases "said body portion" and "said elongate body assembly" in line 7, lack antecedent basis.

Claims 9, 12-13, 51-58 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationship in claim 9 is: the tongue member lacks structural connections to the body portion. The tongue member is not disclosed to be usable without the elongate body portion. Likewise claims 12-13, 51-58 and 63 lack structural support for the tongue member.

Claim Objections

Claim 64 is objected to because of the following informalities: The claim depends on claim 63 that has been withdrawn from consideration. Appropriate correction is required.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5-10, 45, 53-54 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al (USP 5,562,686). The patent to Sauer et al substantially teach each of the limitations recited in claim 5 including a "tongue" at the distal end of an elongated body portion 12 (figure 1), the tongue having a distal section 20 insertable in to a wound, a "face" located at opening 137, opposing the distal section 20 separated by a gap 141, first and second needles 18, 19 located in the elongated body 12, and first and second levers adapted to longitudinally move the needle. See Column 6, lines 28-38. Sauer clearly suggest utilizing levers to move the needles longitudinally.

Concerning claim 6, it further would have been obvious to space the levers 180 degrees from each other or fewer degrees less so as to being able to operate by users having various hand sizes.

In regards to claims 9 and 45, the concept of color-coding is well known in the art; patentability cannot be predicated on color-coding a surgical device. The idea of

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color-coding so as to identify which needle in the device is operating would have been entirely obvious. Further, applicant has not shown any criticality for color-coding the levers.

Claim Rejections - 35 USC § 102

Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by Sauer et al (USP 5,562,686).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McGarry et al (USP 5,382,254).

Claims 20-21, 23-30 and 39 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Green et al (USP 5,554,169).

Claims 20-21, 23 and 40-44 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gerry et al (USP 5,409,478). The second lever 52 is shown in figure 1.

Allowable Subject Matter

Claim 63 is allowable over the art of record.

Claims 31-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12-13, 51-52, 55-58 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (571) 272-4697. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson
Primary Examiner
Art Unit 3731

A handwritten signature in black ink that reads "Gary Jackson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

gj
October 6, 2005